

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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In the Matter of )

Local Competition and Broadband )  
Reporting )

CC Docket No. 99-301

COMMENTS OF THE  
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

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## **SUMMARY**

PCIA supports the FCC's initiative to gather information regarding the status of local telephone service competition and the deployment of "advanced telecommunications capability." However, PCIA believes that a properly coordinated voluntary reporting mechanism coupled with selective surveys would likely yield the same accurate information without burdening the entire wireless and developing broadband industries. Nevertheless, if the FCC chooses to move forward with its mandatory initiative, the Commission should reduce the burden of this proposed reporting requirement on all carriers, particularly on start up broadband providers. This can be accomplished by adopting all of the following recommendations:

- The FCC should increase the 1,000 subscriber threshold level established for broadband providers for mandatory reporting to 50,000.
- The FCC should create a shortened form for those broadband providers that fall below the 50,000 subscriber threshold level and make the reporting voluntary.
- The FCC should only require carriers to submit the data on a state-specific basis and no more often than annually.
- No carrier should be required to modify their business practices to meet the Commission's proposed requirements.
- The FCC must adopt a rule identifying this data as routinely confidential and ensure that the information cannot be linked to individual carriers.
- The FCC should ensure that only aggregated data, by industry sector, is made public.
- The FCC should sunset the data collection obligation after two years to ensure that the program does not outlive its usefulness.

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**COMMENTS OF THE  
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The Personal Communications Industry Association ("PCIA")<sup>1</sup> hereby respectfully submits its comments in response to the Commission's *Notice* in the above-captioned proceeding.<sup>2</sup> As discussed in greater detail below, PCIA supports the Commission's initiative to gather information regarding the status of local telephone service competition and the deployment of "advanced telecommunications capability." Such information is necessary in order for the Commission to better comprehend the state of local competition in a variety of geographic regions and to uphold its statutory obligation of accurately assessing the availability of broadband services pursuant to

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<sup>1</sup> PCIA is an international trade association established to represent the interests of both the commercial and private mobile radio service communications industries and the fixed broadband wireless industry. PCIA's Federation of Councils includes: the Paging and Messaging Alliance, the Broadband PCS Alliance, the Site Owners and Managers Association, the Association of Wireless Communications Engineers and Technicians, the Private Systems Users Alliance, the Mobile Wireless Communications Alliance, and the Wireless Broadband Alliance. As the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 MHz and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of FCC licensees.

<sup>2</sup> In the Matter of Local Competition and Broadband Reporting, Notice of Proposed Rulemaking, CC Docket No. 99-301, (Oct. 7, 1999) ("*Notice*").

Section 706 of the Telecommunications Act of 1996.<sup>3</sup> PCIA agrees with the FCC that without such information, the Commission's statutorily imposed task of reducing regulation, pursuant to Sections 10 and 11 of the 1996 Act, becomes much more difficult.<sup>4</sup> Moreover, as the Commission correctly notes in the *Notice*, regulatory policies that are based on incomplete information are less effective than regulation based on an informed evaluation of what is actually happening in markets.<sup>5</sup>

At the same time, PCIA is not convinced that a well-organized, well-advertised voluntary reporting mechanism coupled with selective surveys would not yield the same accurate information without burdening the entire wireless and developing broadband industries. However, if the FCC chooses to move forward with its mandatory initiative, the Commission must take every step possible to limit the burden of this reporting requirement. PCIA provides several discrete recommendations that should prove useful in simplifying this data collection for smaller broadband providers, including a proposal to increase the proposed 1,000 subscriber threshold level for full broadband providers. Moreover, because disclosure of this information may result in substantial harm to the competitive interests of mobile wireless and fixed wireless carriers, the Commission must take additional strides to ensure that the information remains confidential and cannot be linked to individual carriers.

Chairman Kennard only recently identified broadband as the most important issue on the Commission's agenda today. He explained that "[b]roadband is going to change

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<sup>3</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified 47 U.S.C. §§ 151 *et. seq.* ("1996 Act").

<sup>4</sup> 47 U.S.C. §§ 160, 161.

<sup>5</sup> *Notice*, at ¶13.

America in wonderful ways that no one...can predict.”<sup>6</sup> He argued that regulators at all government levels should seek to maximize consumer welfare by promoting the fast, ubiquitous, competitive and open deployment of broadband technologies. PCIA agrees with the Chairman. It urges the Commission to resist the traditional inclination to collect data and impose reporting obligations, which may have been appropriate for monopoly providers of communications, in this era of sprouting competition. The Commission should do everything possible to ensure that this reporting requirement is simple, unobtrusive, and short-lived so that emerging mobile and broadband providers may focus their efforts on the Chairman’s – and the Commission’s – consumer welfare goals.

#### **I. PCIA GENERALLY SUPPORTS AN ANNUAL, STATE-SPECIFIC DATA COLLECTION PROGRAM**

PCIA is particularly sensitive about the administrative burden that the proposed reporting requirements could impose on the highly competitive mobile wireless and nascent fixed wireless industries. Nevertheless, in order for the FCC to accurately assess the state of local competition, PCIA concurs with the Commission’s tentative conclusion that it requires information from mobile wireless and fixed wireless carriers, and their wireline competitors.<sup>7</sup> PCIA is not convinced, however, that the Commission need mandate this information through a required information collection. The Commission

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<sup>6</sup> Remarks by William E. Kennard, Chairman, Federal Communications Commission, at the National Association of Telecommunications Officers and Advisors 19th Annual Conference, September 17, 1999, “Consumer Choice Through Competition.”

<sup>7</sup> Under no circumstances should the Commission impose non-compliance penalties on any mobile wireless or fixed wireless carriers since these carriers have never been subject to such reporting requirements. The Commission should be especially sensitive to incidents of non-compliance by small and rural mobile wireless and fixed wireless carriers, particularly those that may not even be aware of the FCC’s new reporting requirements.

should again try to solicit voluntary information from providers. It should couple this voluntary effort with selected surveys that can provide it with a picture of nationwide services. If the Commission moves forward with a mandatory information collection, PCIA urges it to modify its proposal in several discrete ways.

**A. The Commission Should Re-Evaluate Which Entities are Subject to the Reporting Requirement and Ensure that Wireless Carriers Do Not Face Repetitive Data Requests**

PCIA believes that the FCC's proposal for carriers with 50,000 or more local access lines or channels nationwide,<sup>8</sup> or 50,000 or more subscribers nationwide to complete the survey will provide the Commission with a solid statistical overview of the state of local competition.<sup>9</sup> However, many small and rural carriers would be exempted from the requirement to report local competition data. In order to ensure that the Commission receives data from all segments of the industry, the Commission should reach out to small and rural carriers, by mail or phone, encourage their participation, and explain why this data collection program is important. In that regard, the Commission should also create a shortened form for small and rural carriers and make the reporting requirement voluntary.

PCIA opposes the Commission's proposal to require entities that provide at least 1,000 full broadband service lines (or wireless channels) or have at least 1,000 full broadband subscribers to complete all relevant portions of the survey. PCIA has serious reservations about the obvious discrepancy between a 50,000 line threshold for the

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<sup>8</sup> PCIA opposes the Commission's proposal to allow an incumbent LEC of any size to have the option of filing a brief letter in lieu of reporting local competition and broadband deployment data for states where that incumbent faces no local service competition and provides a *de minimis* number of broadband lines. *See Notice*, at ¶45. PCIA believes that such data will better illustrate the monopolistic environments to which millions of American consumers are currently subjected.

<sup>9</sup> *Notice*, at ¶125.

wireline community and the 1,000 subscriber threshold for full broadband providers.<sup>10</sup>

The Commission must recognize that the proposed reporting requirement is a significant burden for small, start up fixed wireless carriers. Rather than devoting their full attention to the deployment of their service, the Commission is asking wireless carriers to spend a considerable amount of time filling out forms so that the government can simply monitor their progress.

Consistent with the requirement for the wireline community, the Commission should modify its proposal to only require that entities that provide at least 50,000 full broadband service lines (or wireless channels) or have at least 50,000 full broadband subscribers to complete all relevant portions of the survey. In addition, the Commission should create a shortened form for those broadband providers that fall below the 50,000 subscriber threshold level and make the reporting requirement voluntary. Although the Commission attempts to use Section 706 to justify the discrepancy in the treatment of wireline and broadband providers, nothing in Section 706 substantiates the Commission's claim that "...a more comprehensive (albeit more burdensome) reporting requirement [should be established] for providers of broadband services."<sup>11</sup> These companies, most of who are in their earliest business life, should not face greater reporting burdens than monopoly telephone companies.

PCIA also has concerns that the new wireless reporting obligations are just a preview of things to come. The FCC currently requires monopoly wireline carriers to

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<sup>10</sup> *Notice*, at ¶31.

<sup>11</sup> *See Notice*, at ¶41.



participate in numerous data collection initiatives.<sup>12</sup> Requiring wireless companies to participate in similar data collection efforts would be an administrative nightmare and unnecessary in this most competitive of telecommunications industry sectors. PCIA's member carriers simply cannot afford to spend additional time filling out a variety of state and federal government forms that request duplicative information. We are particularly concerned, for example, that the Commission's new Federal-State Joint Conference on Advanced Telecommunications Services will require similar or additional data from wireless carriers.<sup>13</sup> The FCC must ensure that the proposed reporting requirement is clear, concise, and narrowly tailored to gather only that which is necessary to allow the Commission to meet its statutorily-imposed mandate under Section 706 of the 1996 Act.<sup>14</sup>

**B. The Commission Should Collect Data Annually on a State-By-State Basis**

PCIA endorses the Commission's tentative conclusion to require carriers to compile the required local competition and broadband deployment information on a state-by-state basis. PCIA opposes any attempt by the Commission to require carriers to file reports for a smaller geographic region. As the Commission correctly points out, although the FCC's proposed geographical data collection scheme does not necessarily mirror the service areas of mobile wireless and fixed wireless carriers, all carriers maintain state-

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<sup>12</sup> See e.g., Automated Reporting Management Information System (ARMIS) reporting requirement, Federal-State Joint Board Monitoring Reports, Telephone Industry Infrastructure Reports.

<sup>13</sup> *In the Matter of Federal-State Joint Conference on Advanced Telecommunications Services*, CC Docket No. 99-294, Order, 13 FCC Rcd 24816 ("Joint Conference Order"). [W]e expect that the Conference will monitor and collect data regarding the practices of carriers as they deploy advanced services throughout the nation. *Joint Conference Order*, at ¶¶3, 6.

<sup>14</sup> 47 U.S.C. §706.

specific data for a variety of tax, regulatory, and other purposes.<sup>15</sup> In addition, PCIA agrees with the FCC that the information will be most useful if reporting entities submit the data on a geographically coherent and consistent basis.<sup>16</sup>

The Commission must recognize that the proposed reporting requirements will be a substantial administrative undertaking for some carriers, particularly small and rural carriers and those that offer services in dozens of states. Even at the state level, some mobile wireless and fixed wireless carriers would be required to make dozens of filings under the Commission's proposed reporting rules. Therefore, PCIA believes that carriers should have to make the filing no more often than annually. An annual reporting requirement is consistent with the Commission's other statutory obligations to provide Congress with an annual report on the state of competition in the multi-channel video programming market,<sup>17</sup> the mobile wireless industry,<sup>18</sup> and the availability of advanced telecommunications capability to all Americans.<sup>19</sup> Rather than requesting that carriers report more than once per year, the Commission need only time the annual submission dates of Form 477 to allow it time to compile and analyze this data prior to its Section 706 Report.

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<sup>15</sup> *Notice*, at ¶48.

<sup>16</sup> *Notice*, at ¶46.

<sup>17</sup> 47 U.S.C. § 628(g).

<sup>18</sup> *See* The Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b), amending the Communications Act of 1934 and codified at 47 U.S.C. § 332(c).

<sup>19</sup> 47 U.S.C. § 706(b).

## **II. THE FCC SHOULD TREAT ALL WIRELESS CARRIER-SPECIFIC DATA AS CONFIDENTIAL**

The Commission should ensure that only aggregated data, by industry segment, is made public. All carrier-specific data, including the filed Form 477s, should remain confidential, including data in both individual and aggregate form. Rather than requiring each submitter to request confidentiality, the Commission should by rule impose confidentiality as it has done for other reporting obligations. The Commission has identified no legitimate policy-making purpose for disclosing the number of customers or build-out status of individual companies. PCIA is merely asking the Commission to uphold the confidentiality policies and rules already in place that prohibit the disclosure of materials that contain trade secrets or commercial, financial, or technical data which would customarily be guarded from competitors, as is the case here.<sup>20</sup> This information should also be exempted from FOIA requests.

The Commission has routinely recognized that even non-revenue data deserves confidential treatment. For example, holders of Section 214 certificates must submit customer data after receiving their grants. The Commission, however, provides confidential treatment of the country of origin without the carrier needing to file a request for confidentiality.<sup>21</sup> For revenue data, the Commission often imposes confidentiality when it is not possible to publish the aggregated data without linking it back to the submitter.<sup>22</sup> The Commission has been sensitive to disclosing any data, even in the

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<sup>20</sup> See e.g., 47 CFR § 0.457(d).

<sup>21</sup> See e.g., Public Notices of Overseas 214 Applications and Section 310 (b)(4) Actions, 14 FCC Rcd 4421 (1999), 14 FCC Rcd 4084 (1999), 14 FCC Rcd 5152 (1999), 14 FCC Rcd 3543 (1999).

<sup>22</sup> FCC Releases Study on Telephone Trends, 1998 WL 44862, at 116 (Jan. 30, 1998).

absence of a confidentiality request, when the number of reporting companies is small and would allow the public to identify the company in compiled information.<sup>23</sup>

Where the Commission requires carriers to submit proprietary information to carry out a specific regulatory purpose, it has implemented means of controlling the release of this information. For example, in order to collect Telecommunications Relay Service fees, the Commission requires the submission of revenue data by carriers. However, the TRS administrator may not release this information in company-specific form unless directed by the Commission.<sup>24</sup>

The Commission has not identified a regulatory or policy requirement for making company-specific data available to the public. As it has done elsewhere, it should adopt a rule identifying this data as routinely confidential. It should then ensure that no information is made publicly available that may allow competitors to link the information back to the individual reporting company. In the alternative, the Commission should modify Form 477 to permit companies to “check off” a box requesting confidentiality.

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<sup>23</sup> FCC Releases Telephone Industry Revenues of \$199 Billion in 1995, 1996 W.L. 935437, at 17 (Jan. 31, 1996).

<sup>24</sup> 47 C.F.R. § 64.604(c)(4)(iii)(I). The Commission imposes a similar burden of confidentiality for company-specific data submitted with Universal Service Fund Worksheets. *See* 47 C.F.R. § 54.711(b).

### **III. THE FCC SHOULD NOT IMPOSE DATA REQUESTS THAT REQUIRE CARRIERS TO MODIFY THEIR BUSINESS PRACTICES**

#### **A. PCIA Opposes the FCC's Proposal to Require Broadband Carriers to File Separate Information About Their Residential and Business Customers**

PCIA sees no need for the Commission to insist that full broadband carriers split the data between residential and commercial end users.<sup>25</sup> This distinction simply has no regulatory relevance in the wireless industry, nor is it tracked by the carriers in this fashion. Moreover, the Commission is not statutorily obligated to differentiate the data under Section 706 of the 1996 Act.<sup>26</sup>

In effect, the Commission would require wireless broadband carriers to collect data that has no commercial benefit or regulatory relevance. Wireless carriers do not distinguish between residential and commercial customers for purposes of charges, fees, or taxes. Unlike local wireline carriers, wireless monthly rates and access charges are not determined by the status of the customer. Given the administrative and financial constraints under which these blossoming wireless carriers are currently operating, they simply cannot afford to pay for the software upgrades and data collection/entry requirements that would be necessary to change the way in which customer records are kept. Carriers should not be required to change standard business practices merely to meet an information collection that is not linked to an identifiable regulatory requirement.

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<sup>25</sup> See Notice, ¶165; see also, Attachment A, Sections IV and V.

<sup>26</sup> See 47 U.S.C. § 706

**B. PCIA Supports the FCC's Proposal to Limit the Reporting Categories for Mobile Wireless Carriers**

PCIA supports the Commission's proposal to require mobile wireless carriers to provide data that identifies and separates cellular, PCS, and other wireless mobile telephony subscribers. This breakout is generally consistent with the record keeping practices of mobile wireless operators. In this regard, geographic subscriber counts must be based on the billing record addresses of wireless consumers. Other methodologies for determining the home state of a wireless subscriber would likely be an enormous administrative undertaking and inconsistent with business practices.

**IV. THE DATA COLLECTION OBLIGATION SHOULD SUNSET AFTER TWO YEARS**

The Commission should sunset the data collection requirement after two years. This will allow the Commission to re-assess its proposed reporting requirement in order to ensure that the data collection program does not outlive its usefulness. Reviewing this reporting requirement on a bi-annual basis is consistent with the Commission's statutory obligation to promote regulatory reform, pursuant to Section 11 of the 1996 Act.<sup>27</sup> During these reviews, the Commission should, at a minimum, re-visit the size of the carriers subject to the reporting requirement in order to relieve impositions on small wireless businesses.

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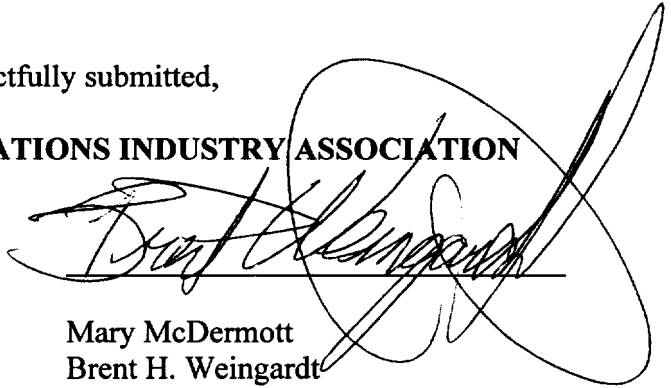
<sup>27</sup> 47 U.S.C. § 161.

## V. CONCLUSION

PCIA urges the Commission to adopt a voluntary reporting mechanism that is coupled with selective surveys. At a minimum, the Commission should re-assess its proposed reporting obligations with an eye on minimizing their impact on small, entrepreneurial wireless companies. The Commission should sunset the data collection obligation after two years to ensure that the program does not outlive its usefulness.

Respectfully submitted,

**PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

A large, stylized handwritten signature in black ink, which appears to read "Brent H. Weingardt", is written over a horizontal line. The signature is highly cursive and loops around the text.

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